

conclusion of the hearing, after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.30.

(c) *Denial of election.* At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status make the election of the Expedited Procedure or the Accelerated Procedure inappropriate.

(d) *Motions for Reconsideration in Cases Arising Under § 955.13.* Motions for reconsideration of cases decided under either the Expedited Procedure or the Accelerated Procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(e) *General rule.* Except as herein modified, the rules of this Part 955 otherwise apply in all aspects.

§ 955.14 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(d) The Board may consider the Federal Rules of Evidence for guidance regarding admissibility of evidence and other evidentiary issues in construing those Board rules that are similar to Federal Rules and for matters not specifically covered herein.

§ 955.15 Discovery.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b)(1) The Board may limit the frequency or extent of use of discovery methods described in these rules. In doing so, generally the Board will consider whether:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(iii) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(2) The parties are required to make a good faith effort to resolve objections to discovery requests informally. A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion

must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(c) If a party fails to appear for a deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories, requests for admission of facts, or requests for the production or inspection of documents, after proper service, the party seeking discovery may request that the Board impose appropriate rulings or sanctions.

§ 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 955.15.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request may be ordered by the Board as deemed admitted upon the failure of a party to respond timely and fully to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or things, to be answered within 30 days. Upon timely objection, the Board will determine the extent to which the requests must be satisfied, and if the parties cannot themselves agree thereon, the Board shall specify just terms and conditions of compliance.

§ 955.17 Depositions.

(a) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(b) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties or, failing such agreement, governed by order of the Board.

(c) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at or before such hearing. It will not ordinarily be received in evidence if the deponent is available to testify at the hearing, but the Board may admit testimony taken by deposition in its discretion. A deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(d) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 955.18 Hearings—where and when held.

If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the parties. At the discretion of the Board, hearings may be held in the Board's hearing room in Arlington, Virginia or may be held at another location with due consideration to the just, informal, expeditious and inexpensive resolution of each case.

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